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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE, Plaintiff and Respondent, v. GUADALUPE MARTINEZ ALVARADO, Defendant and Appellant.	2d Crim. No. B208369 (Super. Ct. No. 2006024185) (Ventura County)

Guadalupe Martinez Alvarado appeals from a judgment imposing probation. He was convicted by jury of injuring a cohabitant (Pen. Code, § 273.5, subd. (a)), sentenced to 90 days in county jail and placed on three years formal probation.[1] Appellant claims there was insufficient evidence that he intended to harm the victim, thus his conviction cannot stand. We affirm.

FACTS

The victim, age 19, had lived with appellant since she was a senior in high school. On June 24, 2006, in the afternoon, the victim left their apartment with her sister. Appellant had come home from work and was upset that a meal was not ready for him, and the victim was afraid that he would be violent with her. She took one of their cars

[1] All further statutory references are to the Penal Code, unless otherwise indicated.

and drove away, accompanied by her sister. Appellant followed in his truck. A witness, Carol Summers, heard screeching brakes and saw appellant pull up behind the victim's car and get out of his truck. He ran toward the victim, while yelling.

The victim rolled up the window and appellant struck it with his fist, shattering it. The victim and her sister were screaming. The car began moving slowly forward and appellant followed alongside it. When it stopped, appellant reached inside the window and unlocked the door, then pulled the victim out of the car by the back of her shirt. The police were called and the victim was separated from appellant. She had lacerations on her face, both hands and foot. Her hand and arm were bleeding.

Police Officer Edward Baldwin spoke to appellant at the scene. He told the officer that the victim had gotten into the car to take her sister to buy ice cream. Appellant warned her not to take the car because she did not have a driver's license. After she drove off, appellant followed the victim, then pulled in front of her car, forcing her to stop. He got out of his truck while yelling at her. Appellant saw her roll up the window and lock the doors. He began pounding on the window and broke it using a "palm strike." Appellant told the officer he realized that he should have called the police to handle the dispute. He was transported to the hospital to be treated for cuts on his right hand.

Another witness, Maryanne Gomez, saw appellant stop his truck in front of the car, pound the driver's side window and knock out the glass. She saw appellant punch the victim in the face and try to drag her out of the car, while her sister tried to pull her back inside the car.

At trial, the victim repeated the story appellant told the police on the day of the attack. She testified that she argued with appellant because she wanted to go out for ice cream. She did not have a license and he told her she could not drive the car. He followed her from the apartment in his truck and pulled up in front of her. Appellant approached her and told her to return the car to the apartment. He was not yelling. The victim and her sister were laughing and talking. Appellant hit the window and glass landed on the victim's hand.

DISCUSSION

The trial court instructed the jury sua sponte on willful infliction of corporal injury on a cohabitant. (CALCRIM No. 840.)[2] It informed the jury that it must find that the defendant "willfully inflicted a physical injury on his cohabitant" and "someone commits an act willfully when he does it willingly or on purpose." Appellant did not object to the instruction.

On appeal, appellant contends that the trial court inadequately defined the term "willfully" because it did not instruct the jury that willfully "has a knowledge element." We may not address this argument. Appellant did not object to the instruction in the trial court, thus he has waived his claim on appeal. (*People v. Andersen* (1994) 26 Cal.App.4th 1241, 1249 [claim of instructional error waived unless it affected the defendant's substantial rights].) Had appellant believed the instruction required modification, he was obligated to request it. (*People v. Rodrigues* (1994) 8 Cal.4th 1060, 1142.)

Sufficiency of the Evidence

Appellant next contends that there is insufficient evidence of intent and the union of act and intent. He claims the prosecution must prove more than that he intended to hit the glass; it must also prove that he intended the glass to hit the victim.

Section 273.5, subdivision (a), states: "Any person who willfully inflicts upon a person who is his . . . cohabitant . . . ., corporal injury resulting in a traumatic condition, is guilty of a felony . . . . This offense is a general intent crime and requires only that the defendant have the '"purpose or willingness to commit the act."' (*People v. Thurston* (1991) 71 Cal.App.4th 1050, 1054; *In re Tameka C.* (2000) 22 Cal.4th 190,

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[2] As given, the instruction told the jury: "The defendant is charged in Count 1 with inflicting an injury on his cohabitant, that resulted in a traumatic condition in violation of . . . section 273.5 [subdivision] (a). [¶] To prove that the defendant is guilty of this crime the People must prove that: [¶] 1. The defendant willfully inflicted a physical injury on his cohabitant; [¶] AND [¶] 2. The injury inflicted by the defendant resulted in a traumatic condition. [¶] Someone commits an act willfully when he does it willingly or on purpose. [¶] A traumatic condition is a wound or other bodily injury, whether minor or serious, caused by the direct application of physical force." (*Ibid.*)

198.) It does not require the specific intent to inflict the traumatic injury. (*People v. Thurston*, at p. 1054.) The prosecution was required only to prove that appellant purposely shattered the car window.

When faced with a challenge to the sufficiency of the evidence, "we review the whole record in the light most favorable to the judgment below to determine whether it discloses substantial evidence - that is, evidence that is reasonable, credible and of solid value - from which a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. [Citations.]" (*People v. Snow* (2003) 30 Cal.4th 43, 66.)

The evidence was substantial that appellant intended to get through the glass to reach the victim. He approached her car at a run, broke the window, unlocked the door and pulled the victim out by her shirt. He told an officer that he broke the window using a "palm strike," an act sufficient to show that he intended to break it. Moreover, a witness (Ms. Gomez) testified that she saw appellant punch the victim in the face. There was substantial evidence of the requisite intent to support appellant's conviction.

Prosecutor's Rebuttal Argument

Appellant claims that the prosecutor erred in her rebuttal argument by stating that the only intentional act she had to prove was appellant's act of hitting the car window. The prosecutor told the jury: "I do not need to show that he intended to batter [the victim]. When he pulled back his hand and he hit that glass, a piece of glass between -- the only thing between he and [the victim], were [*sic*] a few inches away from that glass when he hit that window . . . . He is responsible for the consequences of his actions. . . . [¶] I do not need to show that he intended to batter her by the glass."

Defense counsel objected that the prosecutor misstated the law and the court responded: "The law is what it is. I read it to you and you'll be able to read it in the written instructions that you have." The prosecutor repeated that she did not need to prove that appellant intended to batter the victim with the glass. She informed the jury that the instruction (CALCRIM 250 - Union of Act and Intent: General Intent) could be

found on page 12 of their jury instructions. As we have indicated, the prosecutor accurately stated the law. There was no error.

The Attorney General has indicated that the court neglected to impose a mandatory probation revocation fine of $200 (§ 1202.44) and a $20 security fee pursuant to section 1465.8, subdivision (a)(1), and requests that we direct the court to amend the abstract of judgment. Because the abstract was not included in the record on appeal, we are unable to grant its request.

The judgment is affirmed.

NOT TO BE PUBLISHED.

COFFEE, J.

We concur:

GILBERT, P.J.

YEGAN, J.

Steven E. Hintz, Judge

Superior Court County of Ventura

Lisa M. J. Spillman, under appointment by the Court of Appeal, for Defendant and Appellant.

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